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Attorney for Defendants IRWIN INDUSTRIAL TOOL COMPANY, INC.
and THE HOME DEPOT, INC. and Third-Party Plaintiff BERNZOMATIC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO

ANDREW SHALABY, an individual, and SONIA
DUNN-RUIZ an individual,

Plaintiffs,

vs.

IRWIN INDUSTRIAL TOOL COMPANY, THE
HOME DEPOT, INC., and DOES 2 through 100,
inclusive,

Defendants.

BERNZOMATIC,

Third Party Plaintiff,

vs.

WESTERN INDUSTRIES, INC.,
WORTHINGTON INDUSTRIES, AND ROES 2
through 100, inclusive,

Third Party Defendants.

Case No.: 07-CV-2107 W BLM

**DECLARATION OF SHELLEY
HURWITZ IN SUPPORT OF
MOTION FOR LEAVE TO
DESIGNATE EXPERT WITNESS
JASON LUSK**

Judge: Hon. Thomas J. Whelan
Magistrate Judge: Hon. Barbara Major

**Date: October 2, 2008, 9:00 am
Courtroom: A
NO ORAL ARGUMENT
REQUIRED**

Mand. Settlement Conf: October 14, 2008
Pretrial Conference: January 12, 2009

DECLARATION OF SHELLEY G. HURWITZ

I, Shelley G. Hurwitz, declare as follows:

1. I am an attorney at law admitted to practice before this Court. I am an associate at the firm of Holland & Knight LLP, counsel for Bernzomatic in this action. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would so testify.

2. Attached hereto as Exhibit 1 is a true and correct copy of photographs of an exemplar Bernzomatic hand held torch, model number TS4000, and MAPP gas cylinder.

3. Attached hereto as Exhibits 2 and 3 are true and correct copies of pertinent excerpts from the depositions of Warren Ratcliff and Joe Russo.

4. This matter was originally assigned to Magistrate Judge Hon. Louisa Porter. Judge Porter subsequently recused herself. On July 14, 2008, this case was transferred to Magistrate Judge Hon. Barbara L. Major. Prior to the recusal, Judge Porter issued a Scheduling Order Regulating Discovery and Other Pretrial Proceedings (the "Scheduling Order"), attached hereto as Exhibit 4.

5. The parties thereafter exchanged initial expert designations, and subsequently exchanged expert reports.

6. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiffs' Disclosure of Experts.

7. Attached hereto as Exhibit 6 is a true and correct copy of Dr. Robert Anderson's report in this matter. Attached hereto as Exhibit 7 is a true and correct copy of Dr. Anderson's supplemental report in this matter.

8. Attached hereto as Exhibit 8 is a true and correct copy of Jason Lusk's expert report provided to plaintiffs on August 1, 2008, the date that all non-damages supplemental expert reports were exchanged by the parties.

9. Attached hereto as Exhibit 9 are true and correct copies of emails between myself and plaintiffs' counsel, Mark Epstein. Also included in Exhibit 9 is a true and correct copy of an objection filed by plaintiffs to the designation of Jason Lusk.

Andrew Shalaby v Newell Rubbermaid, Inc., et al.
United States District Court, Southern District of CA (San Diego)
Case No. 3:07-cv-02107-W-POR

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West Fifth Street, 21st Floor, Los Angeles, California 90071.

On **September 12, 2008**, I served the document described as:

**DECLARATION OF SHELLEY HURWITZ IN SUPPORT OF MOTION FOR LEAVE
TO DESIGNATE EXPERT WITNESS JASON LUSK**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

 X **VIA THE ECF FILING SYSTEM .**

I declare under penalty of perjury under the laws of the United States that the above is true and correct and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 12, 2008, at Los Angeles, California.

/s Shelley Hurwitz
Shelley G. Hurwitz

Andrew Shalaby v Newell Rubbermaid, Inc., et al.
United States District Court, Southern District of CA (San Diego)
Case No. 3:07-cv-02107-W-POR

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